



# RULE-MAKING ORDER

**CR-103 (June 2004)**  
(Implements RCW 34.05.360)

**Agency:** Health Care Authority (HCA) – Public Employee's Benefits Board (PEBB) Administrative Order #06-02

☒ **Permanent Rule**  
☐ **Emergency Rule**

**Effective date of rule:**

**Permanent Rules**

☒ 31 days after filing.  
☐ Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

☐ Immediately upon filing.  
☐ Later (specify) \_\_\_\_\_

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

☐ Yes ☒ No If Yes, explain:

**Purpose:** The purpose of this rule making is to update PEBB rules to reflect changes in federal and state law; update eligibility for the PEBB medical flexible spending account plan; and make technical corrects.

**Citation of existing rules affected by this order:**

Repealed:

Amended: WAC 182-08-197, WAC 182-12-116, WAC 182-12-133, and WAC 182-12-171

Suspended:

**Statutory authority for adoption:** RCW 41.05.160

**Other authority :**

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR 06-02-041 on April 14, 2006.

Describe any changes other than editing from proposed to adopted version: Proposed amendments filed with the CR 102 (Notice of Proposed Rule Making) that would have replacing the term "waive" with the term "decline" in WAC 182-12-128 and proposed amendments that would have replaced the term "waive" with the new term "decline" in other rules within Title 182 WAC are withdrawn.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
e-mail \_\_\_\_\_

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

**Date adopted:** May 18, 2006

**NAME (TYPE OR PRINT)**

Cyndi Presnell

**SIGNATURE**

**TITLE**

Assistant Rules Coordinator

**CODE REVISER USE ONLY**  
**Information input by Agency**  
**CODE REVISER'S OFFICE**  
**STATE OF WASHINGTON**

**FILED**  
**May 24, 2006**

**TIME 7:27 a.m.**  
**WSR 06-11-156**

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

|   |     |       |         |          |          |       |
|---|-----|-------|---------|----------|----------|-------|
| <b>Federal statute:</b>                 | New | _____ | Amended | <u>1</u> | Repealed | _____ |
| <b>Federal rules or standards:</b>      | New | _____ | Amended | _____    | Repealed | _____ |
| <b>Recently enacted state statutes:</b> | New | _____ | Amended | <u>1</u> | Repealed | _____ |

**The number of sections adopted at the request of a nongovernmental entity:**

|     |       |         |       |          |       |
|-----|-------|---------|-------|----------|-------|
| New | _____ | Amended | _____ | Repealed | _____ |
|-----|-------|---------|-------|----------|-------|

**The number of sections adopted in the agency's own initiative:**

|     |       |         |       |          |       |
|-----|-------|---------|-------|----------|-------|
| New | _____ | Amended | _____ | Repealed | _____ |
|-----|-------|---------|-------|----------|-------|

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

|     |       |         |          |          |       |
|-----|-------|---------|----------|----------|-------|
| New | _____ | Amended | <u>2</u> | Repealed | _____ |
|-----|-------|---------|----------|----------|-------|

**The number of sections adopted using:**

|                                       |     |       |         |          |          |       |
|---------------------------------------|-----|-------|---------|----------|----------|-------|
| <b>Negotiated rule making:</b>        | New | _____ | Amended | _____    | Repealed | _____ |
| <b>Pilot rule making:</b>             | New | _____ | Amended | _____    | Repealed | _____ |
| <b>Other alternative rule making:</b> | New | _____ | Amended | <u>4</u> | Repealed | _____ |

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05,  
effective 8/27/05)

**WAC 182-08-197 Newly eligible employees must select insurance coverages within thirty-one days of the date they become eligible to apply for coverage.** Newly eligible employees must select a medical and dental plan (if dental is available based on employer participation in PEBB insurance coverages) no later than thirty-one days after they become eligible to apply for coverage. Employees who do not select a medical and dental plan will be defaulted to Uniform Medical Plan Preferred Provider Organization and Uniform Dental Plan (~~((with existing dependent enrollment))~~).

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

**WAC 182-12-116 Who is eligible to participate in the PEBB flexible spending account ((program)) plan?** ~~((State agency employees, including those employed by))~~ Beginning January 1, 2006, all ((state)) employees of public four-year institutions of higher education ((institutions)), of the state community and technical colleges and of the ((higher education coordinating board, and the)) state board for community and technical colleges((,)) who are eligible for PEBB insurance benefits, as defined in WAC 182-12-115, are eligible to participate in the PEBB medical flexible spending account ((program)) plan. Beginning July 1, 2006, all employees of state agencies who are eligible for PEBB insurance benefits, are eligible to participate in the PEBB medical flexible spending account plan.

If an employee terminates employment after becoming a plan participant and later on in the same plan year is hired into a new position that is eligible for PEBB insurance benefits, the employee may not resume participation in the PEBB medical flexible spending account until the beginning of the next plan year.

AMENDATORY SECTION (Amending WSR 04-18-039, filed 8/26/04, effective 1/1/05)

**WAC 182-12-133 What options for continuing coverage are available to employees when they are no longer eligible for PEBB insurance coverage paid for by their employer?** Eligible employees covered by PEBB insurance coverage have options for providing continued coverage for themselves and their dependents during temporary or permanent loss of eligibility. Except in the case of approved family and medical leave, and except as otherwise provided, only employees in pay status eight or more hours per month are eligible to receive the employer contribution.

(1) When an employee is on leave without pay due to an event described in (a) through (f) of this subsection, insurance coverage may be continued at the group rate by self-paying premiums. Employees may self-pay for a maximum of twenty-nine months. The number of months that an employee self-pays premium

during a period of leave without pay will count toward the total months of continuation coverage allowed under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA). Employees may continue any combination of medical, dental and life insurance; however, only employees on approved educational leave may continue long term disability insurance. The following types of leave qualify to continue coverage under this provision:

- (a) The employee is on authorized leave without pay;
  - (b) The employee is laid off because of a reduction in force (RIF);
  - (c) The employee is receiving time-loss benefits under workers' compensation;
  - (d) The employee is applying for disability retirement;
  - (e) The employee is called to active (~~military~~) duty in the uniformed services as defined under the Uniformed Services Employment and Reemployment Rights Act (USERRA); however, self-payment of life insurance is limited to twelve months from the date the employee is called to active duty;
  - (f) The employee is on approved educational leave.
- (2) Part-time faculty may self-pay premium at the group rate between periods of eligibility for a maximum of eighteen months. Part-time faculty may continue any combination of medical, dental and life insurance.
- (3) The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) gives enrollees the right to continue group medical and dental coverage for a period of eighteen to thirty-six months when they lose eligibility due to one of the following qualifying events.
- (a) Termination of employment.
  - (b) The employee's hours are reduced to the extent of losing eligibility.
- (4) Employees who are approved for leave under the federal Family and Medical Leave Act (FMLA) are eligible to receive the employer contribution toward premium for up to twelve weeks, as provided in WAC 182-12-138.

AMENDATORY SECTION (Amending Order 05-01, filed 7/27/05, effective 8/27/05)

**WAC 182-12-171 Eligible retirees.** (1) Eligible employees who terminate public employment after becoming vested in a Washington state sponsored retirement system are eligible to continue PEBB sponsored insurance coverage as a retiree provided the following requirements in (a) and (b) of this subsection as well as one of (c) through (g) of this subsection are met:

(a) If the retiree or enrolled dependent(s) is entitled to Medicare and the retiree retired after July 1, 1991, the Medicare-entitled retiree or Medicare-entitled dependent must enroll in both Medicare Parts A and B; and

(b) The retiring employee must submit an election form to enroll or defer health plan coverage within sixty days after their employer paid or continuous Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage ends and is eligible for retiree benefits under one or more of the programs described in (c), (d), (e), (f), or (g) of this subsection;

(c) Except as provided in (c)(vii) of this subsection, the person immediately upon termination begins receiving a monthly retirement income benefit from one or more of the following retirement systems:

(i) Law enforcement officers' and fire fighters' retirement system Plan 1 or 2;

(ii) Public employees' retirement system Plan 1 or 2;

(iii) Public safety employees' retirement system;

(iv) School employees' retirement system Plan 2;

~~((iv))~~ (v) State judges/judicial retirement system;

~~((v))~~ (vi) Teachers' retirement system Plan 1 or 2; or

~~((vi))~~ (vii) Washington state patrol retirement system.

~~((vii))~~ (viii) Provided, however, that a lump-sum payment may be received in lieu of a monthly retiree income benefit payment under RCW 41.26.425(1), 41.32.762(1), 41.32.870(1), 41.35.410(1), 41.35.670(1), 41.37.200(1), 41.40.625(1) or 41.40.815(1).

(d) The person is at least fifty-five years of age with at least ten years of state of Washington service credit and a member of one of the following retirement systems:

(i) Public employees' retirement system Plan 3;

(ii) School employees' retirement system Plan 3; or

(iii) Teachers' retirement system Plan 3.

(e) The person is a member of a state of Washington higher education retirement plan, and is:

(i) At least fifty-five years of age with at least ten years service; or

(ii) At least sixty-two years of age; or

(iii) Immediately begins receiving a monthly retirement income benefit.

(f) If not retiring under the public employees' retirement system, the person would have been eligible for a monthly retirement income benefit because of age and years of service had the person been employed under the provisions of public employees' retirement system Plan 1 or Plan 2 for the same period of employment.

(g) The person is an elected official as defined under WAC 182-12-115(6) who has voluntarily or involuntarily left a public office, whether or not the person receives a benefit from a state retirement system.

(2) Eligible employees who participate in PEBB sponsored life insurance as an active employee and meet qualifications for retiree insurance coverage as provided in subsection (1) of this section are eligible for PEBB sponsored retiree life insurance if they submit an election form no later than sixty days after the date their PEBB employee life insurance terminates, providing their employee life insurance premium is not being waived by the life insurance carrier at the time they elect retiree life insurance.

(3) The following retired and disabled school district and educational service district employees are eligible to participate in health plan coverage only, provided they meet all of the enrollment criteria stated below and, if they are entitled to Medicare, are also enrolled in both Medicare Parts A and B:

(a) Persons receiving a retirement allowance under chapter 41.32, 41.35 or 41.40 RCW as of September 30, 1993, and who enroll in PEBB health plan coverage not later than the end of the open enrollment period established by the authority for the plan year beginning January 1, 1995;

(b) Persons who separate from employment with a school district or educational service district due to a total and permanent disability and are eligible to receive a deferred retirement allowance under chapter 41.32, 41.35 or 41.40 RCW. Such persons must enroll in PEBB health plan coverage not later than the end of the open enrollment period established by the HCA for the plan year beginning January 1, 1995, or sixty days following retirement, whichever is later.

(4) With the exception of the Washington state patrol, retirees and disabled employees are not eligible for an employer premium contribution.

(5) The two federal retirement systems, Civil Service Retirement System and Federal Employees Retirement System, shall be considered a Washington state sponsored retirement system for

Washington State University Extension employees who are covered under the PEBB insurance coverage at the time of retirement or disability.

(6) Employees who do not elect enrollment in PEBB retiree insurance coverage no later than sixty days immediately after termination of employment for retirement, or immediately after continuous Consolidated Omnibus Budget Reconciliation Act (COBRA) coverage ends, or who terminate PEBB retiree coverage no later than sixty days after retirement, or who terminate PEBB retiree coverage after retirement, are not eligible to reenroll in PEBB retiree insurance coverage unless they retired and deferred PEBB retiree coverage pursuant to WAC 182-12-205 or retired and deferred PEBB retiree coverage pursuant to WAC 182-12-200.

(7)(a) If a retiree's insurance coverage terminates for any reason, coverage will not be reinstated at a later date. Examples of termination include, but are not limited to, any one or more of the following:

- (i) Failure to continue to meet eligibility requirements;
- (ii) Fraud, intentional misrepresentation or withholding of information the enrollee knew or should have known was material or necessary to accurately determine eligibility or the correct premium;
- (iii) Failure to provide information requested by the due date or knowingly providing false information;
- (iv) Abusive or offensive conduct repeatedly directed to an HCA employee, a health plan or other HCA contractor providing coverage on behalf of the PEBB program, its employees, or other persons; or
- (v) Intentional misconduct.

(b) If a retiree fails to pay the premium when due or an underpayment of premium is made, PEBB sponsored insurance coverage will terminate on the last day of the month for which the last full premium was received.

(c) Notwithstanding (a) of this subsection, the PEBB assistant administrator or designee may approve reinstatement of insurance coverage if the retiree or their dependent or beneficiary submits a written appeal and provides proof that extraordinary circumstances made it virtually impossible to make the payment and the retiree agrees to make payment in accordance with the terms of an agreement with the HCA. No insurance coverage will be reinstated more than three times.

(8) Enrollees may not enroll in retiree dental coverage unless they also enroll in retiree medical coverage.

(9) In order to continue retiree term life insurance, an election must be made within sixty days after retirement and premiums must be paid whether or not the retiree is otherwise employed. Election of retiree term life insurance may not be waived or deferred during periods of other coverage or



otherwise.